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Petitioner Wallace R. Bennett, a long-retired professor of law emeritus acting *pro se*, respectfully submits this Petition for a Writ of Certiorari to the United States Supreme Court to review an Opinion and Judgment of the Court of Appeals for the Tenth Circuit. The Opinion, entered on March 23, 2005, is now published: *Reinhart v. Society of Lloyds*, 402 F.3d 982 (10th Cir. 2005). A related brief by Wallace Bennett, case no. 04-4142, not initially considered therein was added by amendment to the unchanged Judgment on May 6, 2005.

Certiorari is requested because hundreds of cases emanating from Lloyds of London and controlled entities have been and are coming to U.S. courts involving substantially similar investment constructs.

A first question is whether complete diversity of citizenship exists between real parties in interest as required for U.S. federal jurisdiction under the pleaded 28 U.S.C. § 1332.

If diversity were deemed properly to be present, a second aspect must be confronted: whether foreign-country judgment should be enforced in the U.S. based primarily on reputed fairness of the foreign (English) *system*, without including close consideration of the predicate federal jurisdictional ground on which execution is sought.

A final dimension is whether public policy expressed in case law, statutory law, constitutional law and equity enunciated by the forum state was understandingly applied by the lower federal courts in this foreign-nation case brought to the U.S. seeking federal enforcement collection.

OPINIONS BELOW

I. The United States District Court for the District of Utah issued a summary judgment that Wallace Bennett pay the Society of Lloyds "£ 415,679.50 being £ 379,687.49 principal and £ 44,992.01 interest together with costs to be taxed if not agreed". November 15, 2002 [Doc. 98] The ruling was without an evidentiary hearing, reproduced its findings referencing extant decisions elsewhere (not made pursuant to 28 U.S.C. § 1332), and lacked a comprehensive regard for the applicable controlling enforcement standards and safeguards of substantive law and equity of Utah, the forum state.

On December 2, 2002, District Judge Tena Campbell concluded in response to a Rule 59(e) Motion and Memorandum to Alter or Amend the Summary Judgment, which reflected a notion of an accommodating role in enforcement to be given an English Writ in U.S. federal courts:

> Although Mr. Bennett contends that new information raised questions about Lloyd's accounting tactics, this information is not relevant given the limited scope of ["facilitating"?] the underlying enforcement action.

[Doc. 101] [Bracketed comment added.]

II. A three - judge panel of the U.S. Court of Appeals for the Tenth Circuit held in an Opinion on March 23, 2005, reissued without substantive change May 6, 2005: "We must reject Mr. Bennett's assertions [Op. p. 39], and defenses" [Op. p. 42]. The court further found that Names could not advance "claims they might have against Lloyds or others as a set-off or counterclaim to their Equitas Premium" [Op. p. 11]. "Jurisdiction is proper pursuant to 28 U.S.C. § 1332 (a)(2)." [Op. p. 41]. "We must respect the ample process afforded by the English system of justice". [Op. p. 46].

As of the filing of this Petition for Certiorari, the Tenth Circuit Opinion has just been printed: *Reinhart v. Society of Lloyds*, 402 F.3d 982 (10th Cir. 2005).

III. A U.S. Bankruptcy judge would not allow any set-offs by the defendant debtor, relying on a decision of the Tenth Circuit Court. An almost eclipsing amount of £ 334,000 was in major contention, a recognized "agreed unsecured claim" against an affiliated managing agency of Lloyds, acknowledged in an advising letter belatedly received by Wallace Bennett in Salt Lake City, August 9, 2002 [Doc. 101, Exh. 3; Doc. 105: Affidavit filed Dec. 2, 2002, page 7 ¶¶ 32-35; and Doc. 178, ¶ 16].

JURISDICTION

The Supreme Court of the United States has jurisdiction of this case under 28 U.S.C. § 1254(1).

The Respondent "Society of Lloyds" invoked 28 U.S.C. § 1332 for jurisdiction to proceed in the United States District Court for Utah against Wallace Bennett.

The Petitioner, a citizen of the United States (Utah), invested with Edward Williams Coutts & Partners, Ltd. of London, becoming a "Member Name" in the Lloyds "community." [See definition of "Lloyds" as "encompassing all persons admitted as members of Lloyds": Doc. 30 p. 4 and Docs. 244, 247; *c.f.* description in the GENERAL UNDERTAKING: "Lloyds", "which expression shall include any officer or employee of Lloyds, any person in or to whom whether individually or collectively any powers or functions are vested or delegated by or pursuant to Lloyds Acts 1871 - 1982."]

The case was appealed to the Tenth Circuit Court of Appeals, where it was decided on March 23, 2005, reissued to include a brief of Bennett's, May 6, 2005.

Wallace Bennett's estate assets are presently within the jurisdiction of the U.S. Bankruptcy Court for Utah under Title 11 U.S.C. Chapter 7.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

A. UTAH CONSTITUTIONAL PROVISIONS

UTAH CONST. Article I, § 7 (Due process of law)

> No person shall be deprived of life, liberty or property, without due process of law.

UTAH CONST. Article. I, § 18 (Contract Impairment)

> No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

UTAH CONST. Article. I, § 27 (Fundamental Rights)

> Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

B. U.S. STATUTES CITED

Title 28 United States Code, Section 1331 (1980)

Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

Title 28 United States Code, Section 1332(a) (1996)

Section 1332 Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy

exceeds the sum or value of $75,000, exclusive of interest and costs, and is between –

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state; . . . .

Title 28 United States Code, Section 1359 (1948)

Parties collusively joined or made

A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court.

Title 28 United States Code, Section 1441 (2002)

Section 1441(b) Actions not removable

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

Title 28 United States Code, Section 1652 (1948)

The Rules of Decision Act:

State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

C. UTAH STATUTES CITED

Utah Uniform Securities Act, UTAH CODE ANN. § 61-1-1 *et al.*

UTAH CODE ANN. § 61-1-13 (2005) **Definitions**

(1) As used in this chapter:

(a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

(b)(i) "Agent" means any individual . . . who represents . . . an issuer in effecting or attempting to effect purchases or sales of securities.

* * *

(d) "Buy" or "purchase" means every contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

* * *

(m) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

* * *

(s) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a joint venture, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

* * *

(v)(i) "Sale" or "sell" includes every contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

* * *

(x)(i) "Security" means any:

* * *

(G) certificate of interest or participation in any profit-sharing agreement;

* * *

(K) investment contract;

* * * *

UTAH CODE ANN. § 61-1-22 (1988)

61-1-22. Sales and purchases in violation — Remedies — Limitation of actions.

(4)(a) Every person who directly or indirectly controls a seller or buyer liable under Subsection (1), every . . . agent who materially aids in the sale are also liable jointly and severally.

* * *

(8) No person who has made or engaged in the performance of any contract in violation of this chapter . . . , may base any suit on the contract.

(9) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with this chapter or a rule or order hereunder is void.

* * * *

[Bolding added.]

Title 70A – Uniform Commercial Code

UTAH CODE ANN. § 70A-1-106 (1965)

Remedies to be liberally administered.

(1) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

UTAH CODE ANN. § 70A-1-203 (1965)

Obligation of good faith.

Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement.

Title 78 – Judicial Code

UTAH CODE ANN. § 78-22b-107(3) (1990)

U.C.A. § 78-22b-107 Asserting and defending a foreign-money claim.

(3) Any party may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

UTAH CODE ANN. § 78-22b-114 (1990)

Supplementary general principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, **principal and agent**, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

[Bolding added.]

STATEMENT OF THE CASE

I. Federal Diversity Jurisdiction Requirements of 28 U.S.C. § 1332

A designated plaintiff, "The Society of Lloyds", should not be accorded accommodating enforcement in the U.S. of an *en masse* summary U.K. Writ against an individual member of Lloyds, invoking federal diversity of citizenship jurisdiction, 28 U.S.C. § 1332; and not without due recognition of controlling Utah state law.

The Tenth Circuit Court all but apologized in its Opinion [Op., p. 32]:

> We have no choice under *Hilton* and *Rocky Mountain* but to examine the entirety of the foreign judicial ***system***, and not the particularity of individual judgments.

However, contrast the landmark case, *Hilton v. Guyot*, 159 U.S. 113 (1895), the last and only time the U.S. Supreme Court declared respecting the overall process to be followed. Rather than regarding an established system underlying a foreign country judgment as constituting justification for virtual per se enforcement in the U.S., the Court modeled an extensive comity review of relevant circumstances surrounding a French judgment for which execution was sought. The Court instructed:

> The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered in France, or any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are *prima facie* evidence only of the justice of plaintiff's claim.

> . . . *Judgment is reversed, and the cause remanded to the Circuit Court with directions to set aside the verdict and to order a new trial.*

Hilton at p. 227, ¶ 4 and at p. 229, ¶ 1. [Italicized in the opinion.]

Published analyses in leading law reviews are especially noteworthy. *See* e.g., *U.S. Securities Laws in International Transactions*, 97 COLUM. L. REV. 57 (1997):

> By enforcing the forum-selection and choice-of-law clauses at issue in the Lloyd's cases, the circuit courts have enabled private parties to contract out of statutory protections that Congress intended to be mandatory. In so doing, the courts have not given adequate consideration to the public policy issues that led to the enactment of the Securities Act and the Exchange Act.
>
> . . . *the circuit courts failed to justify their departure from Supreme Court precedents holding that substantive provisions of U.S. securities laws cannot be waived.*

Id., at p. 90, ¶ 3 and at p. 57, ¶ 2. [Italicized in original].

Clauses that prospectively disenable parties from pursuing statutory remedies have been questioned by the Supreme Court: *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985) at p. 637 n.19, ¶ 2 quoted in *Vimar Seguros Y Reaseguros, S. A. v. M/V Sky Reefer*, 515 U.S. 528 (1995):

> . . . 1 Restatement (Third) of Foreign Relations Law of the United States § 482(2)(d) (1986) ("A court in the United States need not recognize a judgment of the court of a foreign state if . . . the judgment itself, is repugnant to the public policy of the United States"). Were there no subsequent opportunity for

> review and were we persuaded that "the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies. . . , we would have little hesitation in condemning the agreement as against public policy."

Vimar Seguros, at p. 540, ¶ 2.

A telling analysis of Lloyd's course of business was made by Professor of International Law Emeritus Cortland H. Peterson in *Choice of Law and Forum Clauses and the Recognition of Foreign Country Judgments Revisited Through the Lloyd's of London Cases*, 60 LA. L. REV. 1259 (2000). Professor Peterson concluded by referencing an article published in England, THE GUARDIAN, January 11, 2000:

> Most fatal of all, though, was the instinct for secrecy [to which could be added: calculated deception].

60 LA. L. REV., at p. 1280, ¶ 3. [Bracketed comment added].

See also former CEO and Deputy Chairman of Lloyds (1983-1986) Ian Hay Davidson's LLOYD'S A VIEW OF THE ROOM: CHANGE AND DISCLOSURE (1987) confessing a pandemic: "These were not frauds on Lloyd's, they were frauds by insiders at Lloyds on their own members." *Id.* at 2, ¶ 4; John Greenwald, *Lloyds of London Falling Down: A Legendary Institution Stands Accused of Perpetrating a Staggering Fraud*, TIME, February 28, 2000 [Doc. 33, Exhibit 1].

Lloyd's own ONE LIME STREET magazine, *Syndicate Review Process Undertaken*, November 1996 gingerly understated damage to Names even upon a semi-independent audit attempt: "Without such information being available it is difficult for managing agents to demonstrate to monitoring teams that they have fulfiled [sic] their duty to ensure that in approving the

RITC premium equity between Names has been preserved." [Lloyds had strictly promised individual reporting, *cf.* "mutualized" pooling of Name accounts. Doc. *178.*] But recorded in a Hearing Transcript October 10, 2002, pp. 62-64 were admissions by Lloyds U.S. counsel in open court: "Now, what didn't happen is the Names were not allowed to go to syndicates and say give me your records or go to other Names and say give me your records. They were stopped at the level of Lloyd's who was doing the calculations and assembling everything." " [A] misrepresentation was that a, quote, rigorous system of auditing, unquote, was in place in order to estimate future liabilities upon which reinsurance premiums would be calculated. . . "]

An AGENCY AGREEMENT, entered into by Wallace Bennett, without negotiation, was made in trust on the fiduciary reputation of Lloyds of London for integrity: "utmost good faith". Yet the terms of that seminal 11-page, single-spaced preprinted document contained crafted details carrying lurking unforeseen consequences. The AGREEMENT between Wallace Reed Bennett ("the Name") and EDWARD WILLIAMS COUTTS & PARTNERS, LTD., "made the First day of January, one thousand nine hundred and eighty seven," provided critically *inter alia*:

> 1(a) Definition of "Syndicate" and designation of "the Agent" to act for this Name to sign . . . or accede to . . . all agreements . . . to which the Name may be required by the Council [of Lloyds] to become a party."
>
> * * *
>
> 6(a) The Agent shall comply with . . . requirements of the Council.
>
> [Query, even conflict-of-interest demands?]
>
> * * *

9(b) The Name shall pay any funds required by the Agent . . . free from and clear of any set-off, counterclaim or other deduction on any account whatsoever.

[Query, whether such a restriction would be enforceable in a final debt resolution between the parties in the U.S.?]

* * *

23. This Agreement shall be read and construed to take effect in all respects in accordance with English Law.

[Query, should this compel foregoing otherwise applicable substantive and procedural American case law, statutory, and constitutional safeguards?]

24. . . . the parties hereto irrevocably and unconditionally submit for all purposes to the exclusive jurisdiction of the English Courts.

[Query, compelling timeless deference from all non-U.K. courts in every circumstance?]

SIGNED, SEALED AND DELIVERED

Wallace Reed Bennett
and
Director(s) D. Robertson [Chairman]
M. Macpherson

[Bracketed queries added.] [N.B.: "The Society of Lloyds" was not mentioned in THE AGENCY AGREEMENT.]

In a one-and-a-quarter-page "GENERAL UNDERTAKING" predate - stamped "1 Jan. 1987", mechanically signed in London by an illegible "authorized signatory", "The Society

of Lloyds"/ Lloyds was described and defined as party thereto by a dangling solecism that mocked mutuality: "Lloyds", "which expression shall include any officer or employee of Lloyd's, any person in or to whom whether individually or collectively any powers or functions are vested or delegated by or pursuant to Lloyds Acts 1871-1982".

The GENERAL UNDERTAKING contained no "pay now/ sue later" clause as was inserted in a later unagreed Equitas arrangement. The GENERAL UNDERTAKING also stated, but probably never intended, that if "any term of this Undertaking shall to any extent be invalid . . . a substitute provision shall be negotiated by the parties. . . . "

After Wallace Bennett signed THE AGENCY AGREEMENT, Lloyds unilaterally caused a cascade of assignments wherein it orchestrated cash calls and other seizures on syndicate members for its superior interests. My agent contracting party, Edward Williams Coutts & Partners, Ltd. was wholly displaced by Lloyds without my consent with a "Substituted agent", CASTLE MEMBERS AGENCY (M.T. Senior, Chairman) [Docs. 32, 178]; and thereafter by "AUA9", identified as "ADDITIONAL UNDERWRITING AGENCIES LIMITED (No. 9), which the council proposes to appoint as a substitute managing agent for the syndicates to be reinsured by Equitas" [Doc. 244, p. 118]; and "Equitas" [Doc. 244, pp. 114-119].

Equitas was an unincorporated special-purpose creation of Lloyds. The Tenth Circuit Court found that this entity was to be "the assignor of Lloyds underlying claims against the Names". [Op. p. 40] . To set up the lawsuit at bar, Equitas circularly transferred interests to "The Society of Lloyds", the designated corporate Plaintiff herein. [Arguably, the purported "finality" refinancing imposed by Equitas was to "ring fence" Lloyds

(insiders) while "Names" remain still vulnerable for unquantified contingent liabilities].

Historic authority confirms the purposely narrow funnel of § 1332 federal diversity jurisdiction, including non-recognition of apparent assignments having dubious consideration.

> (1) "Congress has established the basic rule that diversity jurisdiction exists under 28 U.S.C. § 1332 only when there is complete diversity of citizenship. 'The policy of the statute calls for its strict construction.' . . . . To allow the requirement of complete diversity to be circumvented as it was in this case would simply flout the congressional command." *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978) at p. 377, ¶ 1. [Citations and footnote omitted.]
>
> (2) "The burden of proving complete diversity exists rests upon the party who seeks to invoke the court's diversity jurisdiction". *Getty Oil Corp. v. Insurance Co. of North America*, 841 F.2d 1254 (5th Cir. 1988) at p. 1259, ¶ 1.
>
> (3) A recognized treatise summarizes that "Since the federal courts are courts of limited jurisdiction, there is a presumption against the existence of diversity jurisdiction in an action involving a natural person". WRIGHT, MILLER & COOPER, 13B FEDERAL PRACTICE AND PROCEDURE: JURISDICTION (2d ed. 1984), § 3611 at p. 516, ¶ 1.
>
> (4) "Thus, a presumption exists that all the stockholders of a corporation chartered by a foreign country are [for a diversity jurisdictional determination] citizens of that country . . . ." WRIGHT, MILLER & COOPER at § 3623 at p. 592, ¶ 2. [Bracketed wording added for clarity.]

(5) "[D]ecisions that fail to remark on a jurisdictional issue are not assumed to have resolved it by their silence." *Cook v. Winfrey*, 141 F.3d 322 (7th Cir. 1998) at p. 325, ¶ 3.

> It is axiomatic that a federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take any action respecting the merits of the action. "The requirement that jurisdiction be established as a threshold matter 'spring[s]' from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Environment*, . . . 118 S.Ct. 1003, 1012. . . .

(6) "We also note the equally well-settled principle that an unincorporated association is deemed a citizen of every state in which its members reside." [thus precluding diversity] *Hummel v. Townsend*, 883 F.2d 367 (5th Cir. 1989) at p. 369, ¶ 10. [The Reorganized LDS Church was not allowed to bring a federal diversity of citizenship lawsuit against its individual members.]

(7) Confirming a conclusion that negates the complete divergence necessary under §1332 when agency relationships and the concept of respondeat superior are involved: "for Lloyds of London, diversity is determined by the residence of each name." O'CONNOR'S FEDERAL RULES * CIVIL TRIALS (2005) at p. 97.

(8) "The burden of proving diversity jurisdiction, when challenged, is upon the plaintiff. . . . " *Kaiser v. Loomis*, 391 F.2d 1007 (6th Cir. 1968) at p. 1010, ¶ 1. [Citation omitted.]

(9) "A district court shall not have jurisdiction of a civil action in which any party by assignment or otherwise has been improperly or collusively made or joined to invoke the jurisdiction of such court". *28 U.S.C. § 1359.*

(10) *Prudential Oil Corp. v. Phillips Petroleum Co.*, 546 F.2d 469 (2nd Cir. 1976) at p. 475, ¶ 5:

> . . . it was suggested by the Supreme Court almost a century ago that an intercorporate assignment between a parent and its subsidiary should be treated as presumptively ineffective for jurisdictional purposes.

(11) *Dweck v. Japan CBM Corporation*, 877 F.2d 790 (9th Cir. 1989):

> The facts in this case are similar to those involving assignments between parent and subsidiary corporations. . . . assignments between parent and subsidiary corporations "are presumptively ineffective to create diversity jurisdiction".
>
> "Section 1359 was designed to prevent parties from channeling a 'vast quantity of ordinary contract and tort litigation . . . into the federal courts. . . .' "
>
> The assignment was not supported by consideration. *See* 14 C. Wright, A. Miller &

> E. Cooper, *Federal Practice and Procedure* § 3639, at 109 (2d ed. 1985).

Dweck, at p. 792, ¶ 6 ; at p. 792, ¶ 7; and at p. 793, ¶ 3. [Case citations omitted.]

> The assignment in this case also failed to include provisions that expressly disavowed any continuing interest in the litigation or its proceeds on the part of the assignor.

Dweck, at p. 793, ¶ 3.

> (12) *Shields v. Barrow*, 58 U.S. 137 (1855) addressing very fundamental jurisdictional concepts declared:
>
> > It is apparent that, if it were in the power of a circuit court of the United States to make and enforce orders like this, both the article of the constitution respecting the judicial power, and the act of congress conferring jurisdiction on the circuit courts, would be practically disregarded in a most import particular.
> >
> > We do not find it necessary to pursue further an examination in detail, of the complicated maze of pleas, . . . which followed the filing of this, so-called, cross-bill. It is enough to say that the defendants to it were never lawfully before the court; that the court never obtained jurisdiction over those parties. . . .
> >
> > This court regrets that a litigation, which has now lasted upwards of thirteen years, should have proved wholly fruitless. . . .

Id., at 58 U.S. 153 ¶ 3, 17 How. 145 ¶ 3; at 58 U.S. 154 ¶ 3, 17 How. 146 ¶ 2; and at 58 U.S. 154 ¶ 4, 17 How. 146 ¶ 3.

(13) *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823 (1969):

> . . . the evident purpose of § 1359, lead us to conclude that . . . the assignment in question was "improperly or collusively made.
>
> . . . there can be little doubt that the assignment was for purposes of collection. . . .
>
> . . . motivated . . . to make diversity jurisdiction available. . . .
>
> If federal jurisdiction could be created by assignments of this kind, . . . a vast quantity of ordinary contract and tort litigation could be channeled into the federal courts at the will of one of the parties. Such "manufacture of Federal jurisdiction" was the very thing which Congress intended to prevent when it enacted § 1359 and its predecessors.

Kramer at pp. 826-827; at p. 827, ¶ 3; at p. 828, ¶ 1; and at pp. 828-829.

II. The Rules of Decision Act, 28 U.S.C. § 1652

Not factually present in the immediate case, but if complete diversity of citizenship under 28 U.S.C. §1332 were determined properly to exist, a related adjacent dimension overriding an outcome for Lloyds must be considered. Congress enacted The Rules of Decision Act, *28 U.S.C. § 1652* to implement a policy of judicial federalism in such a situation.

> **The laws of the several states**, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

[Emphasis added].

Constitutional-level cases apply this precept fully: *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) (state substantive law); *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945) (invoking state equitable principles); and *Wainwright v. Goode*, 464 U.S. 78 (1983) ("[T]he views of the State's highest court with respect to state law are binding on the federal courts." *Id.*, at p. 84, ¶ 2; "The petition for certiorari is granted, the judgment of the Court of Appeals . . . is reversed, and the case is remanded. . . ." *Id.*, at p. 87, ¶ 3.)

A facet of the case becomes whether the " Society of Lloyds" constitutes the real party in interest herein to try to claim U.S. diversity of citizenship federal jurisdiction. The Seventh Circuit Court in *Indiana Gas Company, Inc. v. Home Insurance Company*, 141 F.3d 314 (7th Cir. 1998) (with Chief Judge Posner notably concurring) held that complete diversity jurisdiction was therein lacking, dismissing the case with these comparable specifics:

> Plaintiffs are incorporated . . . in Indiana, so the suit is untenable if any defendant must be treated as a citizen of Indiana.

Id., at p. 316, ¶ 1.

> An underwriting syndicate at Lloyd's has the personal-liability characteristics of a general partnership and the management structure of a limited partnership. It is not incorporated . . . the names "are natural persons and sole traders, subscribing to policies of insurance *each for his or her own part* and not one for the other. They are *members* of various syndicates" (emphasis added). . . . It follows that the underwriting syndicates have the citizenships of every name.
>
> What is more, the intersection of English law with the sixth circuit's rationale produces unfortunate

> implication. Recall that under English law the names *cannot* be sued by insureds.
>
> *Layne* is the only appellate opinion that has discussed syndicates' citizenship under § 1332. District courts are split. . . . We disagree with *Layne* and hold that the underwriting syndicates must be treated like partnerships when determining their citizenships.
>
> This approach reflects a strong reluctance to extend the diversity jurisdiction by judicial interpretation – a reluctance that has characterized the Supreme Court's jurisprudence ever since *Strawbridge* held that complete diversity is essential.

Indiana Gas, at p. 317, ¶ 3; at p. 319, ¶ 1; at p. 319, ¶ 2 ; and at p. 318, ¶ 2. [Italicized in the opinion itself.]

In this way the Seventh Circuit in *Indiana Gas* honored the tenor of U.S. Supreme Court cases respecting limitations on federal diversity of citizenship jurisdiction, explicitly disagreeing with an earlier Sixth Circuit case *Certain Interested Underwriters at Lloyd's v. Layne*, 26 F.3d 39 (6th Cir. 1994).

In dismissing the case before it "for want of subject-matter jurisdiction", the *Indiana Gas* court emphatically remonstrated: ". . . a court has a duty to ensure that subject-matter jurisdiction is present even if the parties disregard the issue. . . ." *Id.*, at p. 319, ¶ 3 and at p. 316, ¶ 3.

As a foreign business enterprise still needing capital, Equitas / Society of Lloyds now tries to collect additionally from original investors in U.S. federal courts, predicated on diversity of citizenship jurisdiction. However, our federal judicial system is fundamentally to have federal-questions decided under 28 U.S.C. § 1331, while contract and tort matters are adjudicated in state forums, not under § 1332 on a diversity of citizenship rationale. Seen as a tactic of forum shopping,

Lloyds evidently eschewed bringing its English writ directly to Utah courts that have undoubted judicial power and are structurally constituted to docket and directly adjudicate contract enforcements and closely supervise supplemental-order specific debt collections.

Section § 1441(b), 28 U.S.C. and *Getty Oil Corp. v. Insurance Co. of North America*, 841 F.2d 1254 (5th Cir. 1988) at p. 1258, ¶ 3 reinforce the policy of § 1332 through a converse proposition: "But even if complete diversity does exist, the case may not be removed from state to federal court if any defendant is a citizen of the state in which the action is brought."

To achieve a status which might facilitate entree to U.S. federal diversity jurisdiction, Nicholas Demery chief counsel, London asserted a dual nature and capacity for Lloyds. [Contrast the disparate description - definition given in the GENERAL UNDERTAKING, *supra*. p. : ". . . any employee of Lloyds, any person in or to whom . . . any powers or functions are delegated. . . ."]:

> The Plaintiff Society of Lloyds ("Lloyds") is a Society and Corporation incorporated under Lloyds Acts 1871 to 1982, comprising all persons admitted as members of Lloyds.

[Refer Doc. 30, ¶ 4, p. 2 and Docs. 244, 247]

Respecting the requirement that "the laws of the several states . . . shall be regarded as rules of decision in civil actions in the courts of the United States", federal courts are to apply state law and equity in § 1332 diversity of citizenship cases under the congressional Rules of Decision Act. The late eminent constitutional authority Charles Alan Wright emphasized this process in his monumental treatise, LAW OF FEDERAL COURTS (5th ed. 1994) at p. 397:

> The federal court must keep in mind . . . that its function is . . . to choose the rule it believes the state court, from all that is known about its methods in reaching decisions, is likely in the future to adopt.

[Which precept also has a broader significance pertinent to the particular § 1332 and Rules of Decision Act matter at bar: what otherwise might be precedent or persuasive reasoning else where in federal adjudications, even state decisions outside the forum state are not governing.]

III. The Outcome-Altering Consequence of Applying State Law of Utah to the Case at Bar

There is a comprehensive body of Utah law and equity for reference in contract construction and enforcement. The Utah Supreme Court in *St. Benedicts Dev. Co. v. St. Benedicts Hospital*, 811 P.2d 194 (Utah 1991), extensively mandated:

> In this state, a covenant of good faith and fair dealing inheres in most, if not all, contractual relationships. *See, e.g., Beck v. Farmers Ins. Exch.*, 701 P.2d 795, 798 (Utah 1985) . . . ; *Resource Management Co. v. Weston Ranch & Livestock Co.*, 706 P.2d 1028, 1037 (Utah 1985) . . . ; *Leigh Furniture and Carpet Co. v. Isom*, 657 P.2d 293, 311 (Utah 1982) . . . ; . . . *Zion's Properties, Inc. v. Holt*, 538 P.2d 1319, 1321 (Utah 1975) . . . ; *Ted R. Brown and Assoc. v. Carnes Corp.*, 753 P.2d 964, 970 (Utah Ct. App. 1988). . . .
>
> For commercial contracts, a covenant of good faith is statutorily imposed. Utah Code Ann. § 70A-1-203. . . . *Bastian v. Cedar Hills Investment & Land Co.*, 632 P.2d 818, 821 (Utah 1981). . . .
>
> To comply with his obligation to perform a contract in good faith, a party's action must be consistent with the agreed common purpose and the justified expectations of the other party. Restatement (Second) of Contracts, § 205 comment a (1981).

St. Benedicts, at p. 199, ¶ 5; at pp. 199-200; and at p. 200, ¶ 2.

The **Supplemental general principles of law** stated in UTAH CODE ANN. § 78-22b-114, set forth verbatim p. 9, *supra*, were reiterated as overall policy. The Utah Uniform Securities Act §§ 61-1-13, 61-1-22, and Utah § 78-22b-107(3) were included. [Doc. 251, pp. 36-43].

A unanimous Utah Supreme Court in *Resources Management v. Weston Ranch and Livestock*, 706 P.2d 1028 (Utah 1985) announced tenets strikingly pertinent to Lloyds: unclear obligations, for and with whom; and a one-way out for the dominant contracting party:

> When there exists only the facade of a promise, i.e., a statement made in such vague or conditional terms that the person making it commits himself to nothing, the alleged "promise" is said to be "illusory. An illusory promise, neither binds the person making it, . . . nor functions as consideration for a return promise.
>
> [A]n implied covenant of good faith forbids arbitrary action by one party that disadvantages the other.
>
> One of the commonest kinds of promises too indefinite for legal enforcement is where the promisor retains an unlimited right to decide later the nature or extent of his performance. This unlimited choice in effect destroys the promise and makes it illusory.
>
> Substantive unconscionability is indicated by "contract terms so one-sided as to oppress or unfairly surprise an innocent party," . . . "an overall imbalance of the obligations and rights imposed by the bargain,". . . .

Id., at p. 1036, ¶ 7; at p. 1037, ¶ 5; at p. 1039, ¶ 4; and at p. 1041, ¶ 8.

The Utah Supreme Court in *Blodgett v. Martsch*, 590 P.2d 298 (Utah 1978) applicably held:

> The breach of a duty by a dominant party in a confidential relationship may be regarded as constructive fraud.

Id., at p. 302, ¶ 5. [Footnote reference omitted.]

In *Mori v. Mori*, 931 P.2d. 854 (Utah 1997) the Utah Supreme Court ordered dismissal of a Japanese decree upon a comity review:

> . . . The court reemphasized that unlike recognition of sister-state adjudications, the Full Faith and Credit Clause does not apply to foreign country judgments. *Aetna Life Ins. Co. v. Tremblay*, 223 U.S. 185, 190 . . . (1912) ("No such right, privilege, or immunity, however, is conferred by the Constitution or by any statute of the United States in respect to the judgments of foreign states or nations. . . ."); *see also* . . . Restatement (Second) Conflict of Laws § 98 (Supp.1988). . . .

Mori, at p. 856, ¶ 2.

Lloyds did indeed obtain a writ in England and from there took my Letter of Credit; cash calls and draw-downs in cash (**$216,000**); "disallowed" Central Fund deposits and credits (amounts never disclosed); accessed reinsurance stop-loss recoveries (**£100,000**); denied a prorata share of proceeds from sale of the Lloyds tower building in London (owned by all Names); and foreclosed a recognized "agreed unsecured credit" claim upon an affiliated entity (Rose, Thomson, Young, managing agency) for **£334,000** [Docs. 32 and 178]. No verification of obligations or credited payments was ever permitted to Names by Lloyds.

There should not be allowed frustration of set-offs, a concept declared in Utah to be an equitable "*doctrine*": "to ensure substantial justice". *Collard v. Nagle Construction, Inc.*, 57 P.3d 603 (Utah App. 2002) at p. 609, ¶ 25:

> Under this doctrine, a defendant may even "utilize a counterclaim, normally barred by the statue of limitations, to offset a plaintiff's claim." *Coulon v. Coulon*, 915 P.2d 1069, 1072 (Utah Ct.App.1996). Recoupment is similar to offset and is utilized

> whether parties' claims arise from the same transaction. *See Mark VII Fin. Consultants Corp. v. Smedley*. 792 P.2d 130, 132-33 (Utah Ct.App.1990) (holding that although offset "refers to an unrelated transaction" and recoupment refers to "the same transaction," "the distinctions between recoupment, offset, and counterclaim have . . . been dissolved in Utah").

Collard, at p. 609, ¶ 23.

Current Utah Supreme Court Chief Justice Christine M. Durham presciently wrote in *Employing the Utah Constitution in the Utah Courts*, 2 UTAH BAR JOURNAL 25 (Issue No. 9, November 1989) at p. 25, ¶ 3:

> properly no federal issue is reached when the state's law protects the claimed right. . . . The right question is what the state's guarantee means and how it applies to the case at hand.

[Reference citations omitted.] *See also* Paul Wake, *Fundamental Principles and Individual Rights*, 1996 UTAH L. REV. 661 to this effect: Utah constitutional provisions and statutes may provide even greater individual protections than federal interpretations of similarly worded federal laws.

IV. Summary Critique of the Opinion of the Tenth Circuit Court

The Tenth Circuit Court pronounced consoling but ineffectual non-holdings seemingly without final consequence: "we find many of Lloyds acts to be distinctly distasteful" [Op., p. 15]; "the English courts found Lloyds guilty of negligence with respect to their Names" [Op., p. 10]; and that **Lloyds had been guilty of serious negligence and/or fraud**". [Op., p. 8] [Bolding added.].

Notwithstanding, the Tenth Circuit held [erroneously]: "the forum selection and choice of law clauses were conclusively enforceable in an execution proceeding thereon in Utah" [Op., p. 9]; that "We must respect the ample process afforded by the English system of justice." [Op., p. 46]; and that "Any suggestion [otherwise] . . . borders on the risible." [Op., p. 21]

Rather, the compelling thesis of this Petition for Certiorari is that a reverential respect for a foreign *system* (English) should not disregard predicate U.S. jurisdiction limitations, and applicable standards of American federalism.

Respectfully submitted,

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